

IN THE MATTER OF ~~E-LICENSE NO. 13924~~ ~~THE MERCHANT DOCKMENTS~~ DOCUMENT NO.

Issued to: Stillson A. Moore

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1543

Stillson A. Moore

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 22 September 1965, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for 6 months outright plus 3 months on 12 months's probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Third Assistant Engineer on board the SS PIONEER MOOR under authority of the license above described, on 31 August 1965, Appellant did wrongfully assault and batter with his fists and with a hammer a member of the crew, Third Assistant Engineer John W. Jinkins.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of two crew members, Third Assistant Engineer John W. Jinkins and Oiler Joseph Palermo, a certified extract from the Shipping Articles of the SS PIONEER MOOR, and entries in the Official Logbook for the voyage.

In defense, Appellant offered in evidence his own testimony. He denied that he hit Mr. Jinkins with a hammer but stated that he picked up the hammer and then put it down before striking Jinkins several blows with his fists.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all valid licenses and documents, issued to Appellant, as indicated above.

FINDINGS OF FACT

On 31 August 1965, Appellant was serving as a Third Assistant Engineer on board the SS PIONEER MOOR and acting under authority of his license while the ship was at sea, on her way to the Panama Canal from Yokohama, Japan. John W. Jinkins was acting as senior Third Assistant Engineer, in charge of the 8 to 12 watch. Also on that watch were the Appellant,

Oiler Joseph Palermo, and an unidentified fireman.

About 0930, the telegraph annunciator, located on a platform in the engine room, suddenly began to ring and continued to do so although Mr. Jenkins jiggled the handle. The Appellant walked over to the telegraph and tried to stop the ringing. When the Appellant ignored Mr. Jenkins' remonstrations, an altercation ensued after Mr. Jenkins slapped the Appellant's hand from the telegraph apparatus. Both men cursed each other and struck blows with their fists, resulting in the Appellant's eyeglasses being knocked to the deck.

The glasses were picked up and returned to the Appellant by Oiler Palermo. The Appellant then went to a work bench, a distance of about 20 feet away, and armed himself with a ball peen hammer. He returned to where Mr. Jenkins stood and struck him several blows with the hammer and his fist. Mr. Palermo, seeing the Appellant swing the hammer, left the area to seek the First Assistant Engineer. When the two returned, the fight was over, but blood was observed on Mr. Jenkins. He was cut under the left eye but was not seriously injured and lost no time from work except the remainder of this 8 to 12 watch.

The prior disciplinary record of the Appellant has been verified to consist of a one month suspension plus 5 months on 18 months' probation on 28 November 1945, for an assault on the SS FRANCISCO CORONADO in November 1945.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Appellant was not afforded sufficient time in which to obtain counsel. He did not reach New York until after 1700, Friday evening, 17 September 1965, and he was unable to contact anyone before the hearing on Monday morning, 20 September. In addition, Appellant was suffering constant pain and wanted time to see a doctor. Under these circumstances, he acceded to the Hearing Examiner's pressure to start the hearing on 20 September.

It is contended that should the case be reopened, the Appellant could prove Mr. Palermo made several untrue statements and was coerced by Mr. Jenkins to testify that Appellant started to strike Mr. Jenkins with a hammer. Moreover, the Appellant's request at the hearing that Mr. Jenkins be examined by a doctor to ascertain whether he had been hit with a hammer was ignored by the Examiner. Constant interruptions by the Examiner confused the Appellant, and, consequently he failed to point out that Mr. Jenkins followed him to the bench and struck him behind the head before he returned the blows.

OPINION

Appellant's contentions are not well-founded. With respect to time to obtain counsel or to attend to his medical needs, there was no attempt on the part of the Examiner to pressure the Appellant to start the hearing on 20 September.

The record discloses that the Appellant stated, at the beginning of the hearing, that he did not need counsel (R-2), did not wish to be represented (R-3), and was willing to go ahead with the hearing because the time involved was costing him money (R-3). At no time during the hearing did he request postponement to obtain counsel. Therefore, he waived this right.

The discussion of his medical problems (R 2-3) discloses that Appellant only wished the fact of his sinus trouble to be on the record. Appellant indicated that he did not want the hearing postponed so he could go to the hospital. Appellant did not state that he was in pain at the hearing.

As to the contention that Mr. Palermo made several untrue statements in his testimony, Appellant's allegations of coercion are not supported by any evidence. These allegations are, therefore, unacceptable.

The record does not indicate any request by the Appellant that Mr. Jenkins be examined by a doctor. Notwithstanding the fact that several weeks had passed since the event, the record discloses that the Appellant made statements relative to the desirability of an examination, not a request (R-2, 25, 27). Therefore, the statement that the Examiner ignored such a request is inaccurate.

Relative to the contention that the Examiner's constant interruptions confused the Appellant so that he forgot to bring out the fact that Mr. Jenkins followed him to the bench and struck him behind the head before he returned the blows, this contradicts his sworn testimony. At the hearing, Appellant admitted that after the first encounter with Mr. Jenkins, ". . . I ran over to the work bench, and I picked up this ball peen hammer and I came running back." He denied hitting Mr. Jenkins with the hammer but admitted striking Mr. Jenkins in the stomach and on the face with his fists, without any indication that Mr. Jenkins resumed the fight after the first incident. During Appellant's narrative of the incident, the Examiner did not interrupt at any time. Therefore, this contention is without merit. I find that the Examiner's findings are based on substantial evidence and there is no reason to reopen the hearing.

ORDER

The order of the Examiner dated at New York, New York, on 22 September 1965, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 3rd day of February 1966.

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